

DEPARTMENT OF THE NAVY
Office of the Secretary
Washington, D.C. 20350

SECNAVINST 5710.21
JAG:133
13 April 1967

SECNAV INSTRUCTION 5710.21

From: Secretary of the Navy
To: All Ships and Stations

Subj: Jurisdiction of service courts of friendly foreign forces in the United States

Ref: (a) JAGINST 5710.2-series, Channels and procedures for receipt and forwarding of requests of friendly foreign forces in the United States relative to the jurisdiction of their service courts
(b) BUPERSINST 1640.5-series, Designation of places of confinement for naval courts-martial prisoners
(c) NAVCOMPT Manual 1035953 (tentative, to be added)

Encl: (1) Act of 30 June 1944 (Public Law 384, 78th Congress; 22 USC 701-706), entitled "An Act to implement the jurisdiction of friendly foreign forces within the United States, and for other purposes," hereinafter referred to as "the Act"

1. **Purpose.** This Instruction sets forth Department of the Navy policy and responsibilities under the Act (enclosure (1)).

2. **Definitions**

a. **Friendly Foreign Force.** Any military, naval, or air force of any friendly foreign state with respect to which the Act is made operative pursuant to section 6 thereof.

b. **Service Court.** Any military, naval, or air force court, court-martial, or similar tribunal of any friendly foreign force within the United States.

3. **Policy**

a. **Service Court Jurisdiction.** A friendly foreign force has the right to exercise jurisdiction in the United States over offenses committed by its members which are punishable by its law but not by the law of the United States or by the law of any political subdivision thereof.

b. **Concurrent Jurisdiction.** The United States, including political subdivisions thereof, and a friendly foreign force have concurrent jurisdiction over offenses cognizable under the laws of both.

(1) The Act does not accord to a friendly foreign force the primary right to exercise its jurisdiction over matters subject to this concurrent jurisdiction; authorities of the United States and its political subdivisions have the primary right to exercise jurisdiction in any particular case unless an international agreement governing the status of the friendly foreign force in the United States (for example the NATO Status of Forces Agreement (TIAS 2846)) provides otherwise.

(2) Pursuant to an applicable international agreement, or in the absence of such an agreement as a matter of comity, the authorities of a friendly foreign force may request a waiver of the primary right of the United States and its political subdivisions to exercise jurisdiction.

c. **Access to Trial.** Any trial of a member of a friendly foreign force by a service court for an alleged offense not solely committed against another member of the friendly foreign force will be open to the public unless security considerations require otherwise.

4. **Responsibilities**

a. **JAG Designated as Agent.** The Judge Advocate General is hereby designated as agent to assist a friendly foreign force in the interpretation and use of the Act. The Judge Advocate General will

(1) Establish appropriate channels and procedures for the receipt and forwarding of requests (see reference (a)); and

(2) Assist the friendly foreign forces in their contacts with authorities of the United States, including political subdivisions thereof, in matters arising under provisions of this Instruction.

b. **Shore Patrol Authorized to Apprehend.** Members of the shore patrol and Navy and Marine Corps members of joint Armed Services police detachments are hereby authorized to apprehend any member of a friendly foreign force having service courts of appropriate jurisdiction within the United States, when the commanding officer of that force or his designated representative

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specifically requests such apprehension. Such requests will include:

(1) A full description of the person to be apprehended, and a statement that that person is a member of the friendly foreign force concerned, and as such is subject to the jurisdiction of its service court for the offense allegedly committed.

(2) A description of the offense allegedly committed by the person to be apprehended.

(3) The name, address, and telephone number of an officer of the friendly foreign force to be contacted if the person is apprehended.

(4) Citation of the Act, 22 USC 701-706, authorizing the confinement.

c. Guidance. Guidance shall be promptly sought through appropriate channels of the Department of the Navy whenever it is considered inadvisable to carry out the request for apprehension or the person to be apprehended is a U.S. national or ordinarily resides in the United States.

d. Offense Involving Substantial Local Interest. If the offense allegedly committed by the member whose apprehension is requested involves substantial local interest, apprehension will be coordinated with appropriate civilian authorities.

e. Places of Confinement. Persons sentenced to imprisonment by a service court may be confined in such places of confinement or detention as are prescribed by a military department or the Department of Justice.

(1) In accordance with article 12 of the Uniform Code of Military Justice (10 USC 812), friendly foreign forces prisoners will not be placed in confinement in immediate association with members of the Armed Forces of the United States, although they may be confined in the same confinement facility. Subject to the foregoing, when being confined in a naval place of confinement or detention, a person sentenced to imprisonment by a service court will be confined or detained where a member of the naval service would be confined or detained in similar circumstances under reference (b). The Corrections Manual (NAVPERS 15825 Rev.) sets forth the basic policies, standards, and procedures for Navy and Marine Corps confinement facilities and is applicable to persons of friendly foreign forces confined. These general regulations may be modified by specific regulations or instructions

of the Commandant of the Marine Corps, the Chief of Naval Personnel, or delegated authority.

(2) Use of a Navy or Marine Corps place of confinement, including pretrial confinement, prior to execution of a sentence adjudged by a service court may be authorized only on receipt of a specific written request for such use from an officer authorized by a friendly foreign force to request apprehension, in accordance with subparagraph 4b above. If the detention period is to exceed 45 days, the authorization must be approved by the Secretary of the Navy.

(3) Confinement in a Federal penal or correctional institution will be in conformity with Department of Justice regulations.

(4) All detention or confinement will be at the sole expense of the friendly foreign force concerned. This applies also to any other expenses resulting from requests of a friendly foreign force under the Act, i.e., requests for apprehension or requests for attendance of witnesses. See reference (c).

f. Reporting Requirements. Officers in command or in charge will report to the Judge Advocate General all cases arising in their command under provisions of this instruction and all confinements or detentions authorized pursuant to subparagraph 4e(2) above. The Judge Advocate General will forward the reports to the General Counsel, Department of Defense. Progress and final reports are required when there are significant further developments after the initial report. The reports shall be sent directly to the Judge Advocate General with information copies to (1) superiors in the chain of command of the reporting commanding officer or officer in charge, and (2) the Commandant of the Marine Corps or the Chief of Naval Personnel, as appropriate. (JAG Report Symbol 5710-1).

ROBERT H. B. BALDWIN
Under Secretary of the Navy

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Act of 30 June 1944 (Public Law 384, 78th Congress), entitled
 "An Act To implement the jurisdiction of friendly foreign forces
 within the United States, and for other purposes,"
 as contained in Title 22, United States Code, §§ 701-706

TITLE 22.—FOREIGN RELATIONS AND INTERCOURSE

Chapter 13.—SERVICE COURTS OF FRIENDLY
FOREIGN FORCES

- Sec.
 701. Definitions.
 702. Arrest of offenders.
 703. Attendance of witnesses.
 704. Immunities of courts and witnesses.
 705. Imprisonment.
 706. Operative effect dependent upon Presidential finding.

§ 701. Definitions.

As used in this chapter, unless the context clearly requires a different meaning—

(a) "Friendly foreign force" means any military, naval, or air force of any friendly foreign state with respect to which this chapter is operative by virtue of a Presidential declaration as provided in section 706 of this title.

(b) "Service court" means any military, naval, or air force court, or court martial or similar tribunal of any friendly foreign force within the United States.

(c) "United States" means the United States, its Territories, its insular possessions, the Canal Zone, and any other place subject to the jurisdiction of the United States. (June 30, 1944, ch. 326, § 1, 58 Stat. 643; Proc. No. 2695, July 4, 1946, 11 F. R. 7517, 60 Stat. 1352.)

CODIFICATION

The phrase "(including the Philippine Islands)" was deleted from the definition of the term "United States" in subsection (b), pursuant to 1946 Proc. No. 2695, which granted independence to the Philippine Islands under the authority of section 3194 of this title, under which section Proc. No. 2695 is set out as a note.

§ 702. Arrest of offenders.

Upon a specific or general request of the officer commanding any friendly foreign force, having service courts of appropriate jurisdiction within the United States, it shall be lawful for any person in the civil, military, or naval establishments of the United States having authority to arrest, summarily to arrest any member of such force designated in such request and to deliver him to the custody of any officer of such force or to the custody of the military or naval authorities of the United States who shall deliver him forthwith to the custody of an officer of such force, for trial in such service courts within the United States for such offenses as shall lie within the jurisdiction of the service courts of such friendly foreign force: *Provided*, That the trial of any member of such friendly foreign force for an offense against a member of the civilian population shall be in open court (except where security consideration forbids), shall take place promptly in the United States and within a

reasonable distance from the place where the offense is alleged to have been committed, for the convenience of witnesses. (June 30, 1944, ch. 326, § 2, 58 Stat. 643.)

§ 703. Attendance of witnesses.

(a) Any district court of the United States, or the United States courts of any Territory or possession, within the jurisdiction of which proceedings are had before any service court of a friendly foreign force, or within the jurisdiction of which any person is found, shall have jurisdiction, upon application made by a service court of a friendly foreign force, to issue to such person an order requiring him to appear before the service court or an officer designated to take a deposition for use before such service court and there to produce evidence or give testimony if so ordered. Any failure to obey such order of the court may be punished by said court as a contempt thereof: *Provided*, That the fees of such witnesses and the mileage at the rate allowed to witnesses attending the courts of the United States should be duly paid or tendered in advance to such witnesses, with funds to be supplied by the friendly foreign force. Except as expressly permitted by the court, in its discretion, no such order shall run into any other district.

(b) Attendance of witnesses in the armed services of the United States shall be obtained by request addressed to the discretion of the commanding officer of the person whose testimony is required.

(c) Persons subject to the jurisdiction of the United States, who are not members of a friendly foreign force, who shall give false testimony or shall commit any act in the presence of a service court of a friendly foreign force which, if committed before a court of the United States, would be in contempt thereof, shall upon conviction by a court of the United States be fined not more than \$2,000 or imprisoned for not more than six months, or both. (June 30, 1944, ch. 326, § 3, 58 Stat. 644; Proc. No. 2695, July 4, 1946, 11 F. R. 7517, 60 Stat. 1352; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

COMMUNICATION

Words "or any court of first instance of the Philippine Commonwealth" were deleted pursuant to Proc. No. 2695, which granted independence to the Philippines under the authority of section 1394 of this title, under which section said Proc. No. 2695 is set out as a note.

In subsec. (a), reference to "the District Court of the United States for the District of Columbia" was omitted since the District of Columbia constitutes a judicial district, and the District Court of the United States for the District of Columbia is included within the term "district courts of the United States" as used in such subsection. See sections 88 and 132 of Title 28, Judiciary and Judicial Procedure.

Enclosure (1)

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Enclosure (1)

§ 704. Immunities of courts and witnesses.

Members of any service court of a friendly foreign force lawfully exercising jurisdiction in the United States in relation to members of such force, and any witnesses appearing before such service court, shall enjoy the same immunities and privileges as are enjoyed by members of a court martial of the United States and by witnesses appearing before such a court martial. (June 30, 1944, ch. 326, § 4, 58 Stat. 644.)

§ 705. Imprisonment.

Persons sentenced to imprisonment by a service court of a friendly foreign force may be confined in disciplinary barracks, guardhouses, or other places of detention of the United States armed forces or in

penitentiaries or other institutions employed by the United States for the detention or treatment of prisoners, at the expense of the state on whose behalf the prisoner is detained. (June 30, 1944, ch. 326, § 5, 58 Stat. 644.)

§ 706. Operative effect dependent upon Presidential finding.

This chapter shall be operative with respect to the military, naval, or air forces of any foreign state only after a finding and declaration by the President that the powers and privileges provided herein are necessary for the maintenance of discipline. The President may at any time revoke such finding and declaration. (June 30, 1944, ch. 326, § 6, 58 Stat. 645.)

Enclosure (1)

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